



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,225	07/15/2003	Lisa F. Cox	49278.0001.8	8523

7590

08/11/2005

The Patent Law Offices of Walter L. Beavers
326 South Eugene Street
Greensboro, NC 27401

EXAMINER

BENNETT, GEORGE B

ART UNIT	PAPER NUMBER
----------	--------------

2859

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,225

Applicant(s)

COX ET AL.

Examiner

G. Bradley Bennett

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,9-19 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,9-19 and 23-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3, 4, 9-11, 13, 14 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette, Jr. et al. (Schuette). in view of White, Trane and Barr.

3. Schuette discloses the invention as substantially as claimed where: **58** is a substantially transparent plate; **64** is a level on the plate which also functions as a handle; and the tool is in an orientation for marking a polygon, which is a rectangle. Schuette also includes a plurality of embodiments such that the size of the device can be varied as needed, which would include an embodiment with a length to width ratio of 4 to 1. However, Schuette does not disclose a second level, series of graduated markings on the sides, the central handle or the marking means as claimed. White discloses how a measuring and marking tool can be provided with two levels for the purpose of checking to see if the tool is level in a plurality of orientations. White also discloses how graduations may be used on two edges for the purpose of making measurements using either of the two edges. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use plural levels as taught by White in conjunction with the Schuette device for the purpose of using the Schuette device in a plurality of orientations. Additionally, it would have been obvious to one of ordinary skill in the art at the

Art Unit: 2859

time the invention was made to use graduations as taught by White in conjunction with the Schuette device to permit a person to make measurements with the Schuette device.

4. Trane discloses how a handle **15** with a finger recess can be centrally located on a measuring device for the purpose of holding the measuring device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the handle as taught by Trane in conjunction with the Schuette device as an alternative means for holding the combined device.

5. Barr discloses how a marking material **14** can be used with ink or paint for the purpose of printing a pattern on a surface. A plurality of pads are spatially aligned to form a pattern. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use making materials as taught by Barr in conjunction with the Schuette device for the purpose of using the combined device to print patterns on a surface. The method as claimed in claims 23-26 will inherently be performed when using the above combination.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette, White, Trane and Barr, as applied to claim 11 above, and in further view of Johansen et al. (Johansen).

7. Schuette, White, Trane and Barr disclose the invention substantially as claimed. However, none disclose a concave surface as claimed. Johansen discloses how a concave surface can be used with measuring device for purpose of elevating a substantial part of the device above a surface (see FIG 2, for example). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a concave surface as taught by Johansen in conjunction with the combination of Schuette, White, Trane and Barr for the purpose of using the combined device to elevate the tool above a surface.

Art Unit: 2859

8. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette, White, Trane and Barr as applied to claim 1, above and in further view of Greer.

9. Schuette, White, Trane and Barr disclose the invention substantially as claimed. However, none disclose the diamond shape or two plate portions as claimed. Greer discloses how two plates may be adjustably connected to form diamond, square or rectangular patterns. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the plates as taught by Greer in conjunction with the combination of Schuette, White, Trane and Barr for the purpose of rendering the combined device more versatile and adjustable.

10. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette in view of White, Trane and Innis.

11. Schuette discloses the invention substantially as claimed. However, Schuette does not disclose a second level, the central handle, or the instruction as claimed. White discloses how a measuring and marking tool can be provided with two levels for the purpose of checking to see if the tool is level in a plurality of orientations. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use plural levels as taught by White in conjunction with the Schuette device for the purpose of using the Schuette device in a plurality of orientations.

12. Trane discloses how a handle 15 with a finger recess can be centrally located on a measuring device for the purpose of holding the measuring device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the

Art Unit: 2859

handle as taught by Trane in conjunction with the Schuette device as an alternative means for holding the combined device.

13. Innis discloses how video instructions may be used for the purpose of assembling something (see col. 3, ll. 43-46). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the instructions as taught by Greer in conjunction with the Schuette device to provide instructions for how to use the combined device.

14. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schuette, White, Trane and Innis as applied to claim 17 above, and further in view of Barr.

15. Schuette, White, Trane and Innis disclose the invention substantially as claimed. However, none disclose marking material as claimed. Barr discloses how a marking material **14** can be used with ink or paint for the purpose of printing a pattern on a surface. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use making materials as taught by Barr in conjunction with the Schuette, White and Innis devices for the purpose of using the combined device to print patterns on a surface.

Response to Arguments

Applicant's arguments with respect to pending claims 1, 3, 4, 9-19 and 23-26 have been fully considered but they are not persuasive. The Applicant argues that the marking pads are now claimed to be visible through the plate. This is not persuasive because the pads of the above combination will also be visible through the plate, since the plate of Schuette is transparent (see col. 6, ll. 42-47). The applicant further argues that a central handle has been claimed. As noted above, a central handle appears on the Trane device.

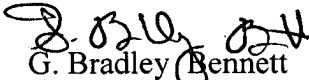
Art Unit: 2859

Any inquiry concerning this communication or earlier communications from the examiner should be directed to G. Bradley Bennett whose telephone number is 571.272.2237.

The examiner can normally be reached on M-TH 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on 571.272.2245. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free).


G. Bradley Bennett
Primary Examiner
Art Unit 2859

gbb
8 AUG 2005